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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,932	03/11/2004	Scott Arthur William Muirhead	407500003COA	6932
31295 7590 06/03/2008				
PRICE & ADAMS, P.C. 4135 BROWNSVILLE ROAD P.O. BOX 98127 PITTSBURGH, PA 15227-0127				
EXAMINER				
CHEN, JOSE V				
ART UNIT		PAPER NUMBER		
3637				
MAIL DATE		DELIVERY MODE		
06/03/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/798,932

**Applicant(s)**MUIRHEAD, SCOTT ARTHUR  
WILLIAM**Examiner**

José V. Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

With regard to applicant's remarks, regarding the Declaration, it is noted that claim 19 is rejected under 35 USC 102(b) and not rejected under 35 USC 103. It is repeated that the Declaration under 37 CFR 1.132 filed 06-25-07 is insufficient to overcome the rejection of claims 19-27 based upon Apps et al ('677), Gronnevik as set forth in the last Office action because : 1) secondary considerations are made with respect to obviousness. Secondary considerations are not relevant to **anticipation under 35 USC 102** (with respect to claim 19). Further, there is no nexus between the merits of the **claimed** invention and the evidence of the secondary considerations; 2) there is no factual evidence of the stated opinions, such as testing results. Further, the examiner does not state that the secondary considerations were not considered. The examiner stated that the Declaration was **insufficient to overcome** the rejections.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al (6,006,677). The patent to Apps et al teaches structure as claimed including a pallet assembly, a fire resistant layer formed upon an exterior of the pallet assembly. It is noted here that plastics including thermoplastic material provide a fire resistant layer

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and therefore, the thermoplastic pallet structure of Apps et al teaches structure as claimed.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Gronnevik. The patent to Gronnevik teaches structure as claimed including a thermoplastic pallet, a fire resistant layer as stated as above. It is repeated, the first two paragraphs of the article submitted (ids filed 06-19-06 entitled "Fire and Polyvinyl Chloride", 1996), it is stated that "Polyvinyl chloride (PVC, or vinyl) materials or product tend to have excellent fire performance properties..." Further, in the article to McGrath, cited by the examiner, thermoplastic materials are considered to have a certain fire resistance. Claim 19 states A...a fire resistant layer formed upon an exterior of said pallet assembly." Both Gronnevik and Apps (both including thermoplastics) teach such as stated in the rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik. The patent to Gronnevik teaches structure substantially as claimed, as discussed above, including a pallet shell half (3), second pallet shell half (4) fused together, a support structure. The placement of a support member or the dimension of a shell are matters of desirability which would have been obvious and well within the level of ordinary skill in the art, thereby providing structure as claimed and further would have been predictable.

Claims 20, 21, 23, 24, 25, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gronnevik in view of Ford et al. The patent to Gronnevik teaches structure substantially as claimed including a fire resistant pallet, the only difference being that the pallet does not include a mixture of intumescent material. However, the patent to Ford et al teaches the use of providing intumescent compositions of plastic to provide a protective layer for a structure. It would have been obvious at the time of the invention to modify the structure of Gronnevik to include a mixture of intumescent plastic material to provide a protective layer for a structure, as taught by Ford et al since such structures are used for the same intended purpose, thereby providing structure as claimed. The percentages or ratios of mixture is a matter experimentation which would have been obvious and well within the level of ordinary skill in the art and would have

been predictable, thereby providing structure as claimed. It is noted that the method to which a utility structure is formed carries no weight in a utility claim.

***Allowable Subject Matter***

Claims 11-18 are allowable over the prior art of record. It is noted that claims 11-18 were previously indicated as being allowable in pto form-326, but was not indicated in the body of the last office action as being allowable. Any inconvenience or confusion is regretted.

***Response to Arguments***

Applicant's arguments filed 10/26/07 have been fully considered but they are not persuasive. See statements above. With regard to applicant's remarks regarding an interference, it is noted that at this time no interference is made since at least,: 1) claim 19 is not allowed; 2) no establishment of interference-in-fact in a two-way analysis that shows (a) why the subject matter of the claim of the first application (presumed to be prior art) would have anticipated or rendered obvious the subject matter of the claim of the second application or patent AND (b) why the subject matter of the claim of the second application or patent (presumed to be prior art) would have anticipated or rendered obvious the subject matter of the claim of the first application; and 3) no claim is copied.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

José V. Chen  
Primary Examiner  
Art Unit 3637

/José V. Chen/  
Primary Examiner, Art Unit 3637  
05-27-08